

Assembly Bill No. 17

Passed the Assembly July 23, 2009

Chief Clerk of the Assembly

Passed the Senate July 23, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 18663, 19025, 19136, and 19136.1 of the Revenue and Taxation Code, and to amend Section 13020 of the Unemployment Insurance Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, Committee on Budget. Taxation.

Existing law requires the Franchise Tax Board to prepare wage withholding tables to be used by employers for purposes of withholding taxes on wages paid. Existing law allows, in lieu of the withholding tables, withholding at a rate of 6% with respect to supplemental wages and at a rate of 9.3% with respect to stock options and bonus payments.

This bill would, for wages paid on or after November 1, 2009, require the wage withholding tables to produce a sum that is equal to 10% more than the sum specified for purposes of the withholding tables. This bill would, also increase the withholding rates to 6.6% for supplemental wages and to 10.23% for stock options and bonus payments paid on or after November 1, 2009.

Existing income tax laws require specified individuals to pay estimated income taxes in installments and impose additional liability for underpayments.

This bill would adjust the amount of those installments under specified circumstances.

The Personal Income Tax Law and the Corporation Tax Law impose a penalty for underpayment of estimated tax. Existing law provides for a credit based on taxes withheld on wages, in modified conformity with federal income tax laws, against the estimated tax payments, including a provision that “an equal part” of that amount is deemed paid on each due date for a taxable year.

This bill would substitute “the applicable percentage,” as defined, for “an equal part” under this provision, as provided.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.

The people of the State of California do enact as follows:

SECTION 1. Section 18663 of the Revenue and Taxation Code is amended to read:

18663. (a) (1) The Franchise Tax Board shall annually (or more often if necessary) prepare and make available to the Employment Development Department, wage withholding tables that shall be used by every employer making payment of any wages to a resident employee for services performed either within or without this state; or to a nonresident employee for services performed in this state, to deduct and withhold from those wages for each payroll period, a tax computed in a manner as to produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054, a sum that is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) resulting from the inclusion in the gross income of the employee the wages which were subject to withholding.

(2) For wages paid on or after November 1, 2009, wage withholding tables prepared by the Franchise Tax Board pursuant to this subdivision shall produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054, a sum that will significantly prevent underwithholding by using an amount equal to 10 percent more than the sum described in paragraph (1).

(b) (1) (A) For supplemental wages paid on or after January 1, 1992, the rate of withholding that may be applied to supplemental wages in lieu of the wage withholding tables specified in subdivision (a) shall be 6 percent.

(B) For supplemental wages paid on or after November 1, 2009, the rate of withholding shall be 6.6 percent.

(2) For purposes of this subdivision, “supplemental wages” includes, but is not limited to, bonus payments, overtime payments, commissions, sales awards, back pay including retroactive wage increases, and reimbursements for nondeductible moving expenses

that are paid for the same or a different period, or without regard to a particular period.

(c) (1) For stock options and bonus payments that constitute wages paid on or after January 1, 2002, the rate of withholding that may be applied to those stock options and bonus payments in lieu of the wage withholding tables specified in subdivision (a) shall, notwithstanding subdivision (b), be 9.3 percent.

(2) For stock options and bonus payments that constitute wages paid on or after November 1, 2009, the rate of withholding shall be 10.23 percent.

SEC. 2. Section 19025 of the Revenue and Taxation Code is amended to read:

19025. (a) If the amount of estimated tax does not exceed the minimum tax specified by Section 23153, the entire amount of the estimated tax shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(b) Except as provided in subdivision (c), if the amount of estimated tax exceeds the minimum tax specified by Section 23153, the amount payable shall be paid in installments as follows:

If the requirements of this subdivision are first met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year.....	30 (but not less than the minimum tax provided in Section 23153 and any tax under Section 23800.5)	40	0	30

After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year.....	—	60	0	40
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year.....	—	—	70	30
After the last day of the 8th month and before the 1st day of the 12th month of the taxable year.....	—	—	—	100

(c) If a wholly owned subsidiary is first subject to tax under Section 23800.5 after the last day of the third month of the taxable year of owner, the amount of the next installment of estimated tax under subdivision (b) after the wholly owned subsidiary is subject to tax under Section 23800.5 shall not be less than the amount of the tax of the wholly owned subsidiary under Section 23800.5 and an amount equal to that amount shall be due and payable on the date the installment is required to be paid. For purposes of determining which installment is the next installment of estimated tax under subdivision (b), subdivision (b) shall be modified by substituting “includes the tax of a wholly owned subsidiary under Section 23800.5” for “exceeds the minimum tax specified by Section 23153.”

(d) The amendments made to this section by Section 1 of Chapter 1 of the First Extraordinary Session of the Statutes of 2008 shall apply to installments due for each taxable year beginning on or after January 1, 2009, and before January 1, 2010.

(e) The amendments made to this section by the act adding this subdivision shall apply to installments due for each taxable year beginning on or after January 1, 2010.

SEC. 3. Section 19136 of the Revenue and Taxation Code is amended to read:

19136. (a) Section 6654 of the Internal Revenue Code, relating to failure by an individual to pay estimated income tax, shall apply, except as otherwise provided.

(b) Section 6654(a)(1) of the Internal Revenue Code is modified to refer to the rate determined under Section 19521 in lieu of Section 6621 of the Internal Revenue Code.

(c) (1) Section 6654(e)(1) of the Internal Revenue Code, relating to exceptions where the tax is a small amount, does not apply.

(2) No addition to the tax shall be imposed under this section if the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, or the tax computed under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, is less than five hundred dollars (\$500), except in the case of a separate return filed by a married person the amount shall be less than two hundred fifty dollars (\$250).

(d) Section 6654(f) of the Internal Revenue Code does not apply and for purposes of this section the term “tax” means the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 less any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, other than the credit provided by subdivision (a) of Section 19002.

(e) (1) The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, shall be the credit allowed under subdivision (a) of Section 19002.

(2) (A) Section 6654(g)(1) of the Internal Revenue Code is modified by substituting the phrase “the applicable percentage” for the phrase “an equal part.”

(B) For purposes of this paragraph, “applicable percentage” means the percentage amount prescribed under Section 6654(d)(1)(A) of the Internal Revenue Code, as modified by subdivision (a) of Section 19136.1.

(f) This section shall apply to a nonresident individual.

(g) (1) No addition to tax shall be imposed under this section to the extent that the underpayment was created or increased by

any provision of law that is chaptered during and operative for the taxable year of the underpayment.

(2) Notwithstanding Section 18415, this section applies to penalties imposed under this section on and after January 1, 2005.

(h) The amendments made to this section by Section 5 of Chapter 305 of the Statutes of 2008 shall apply to taxable years beginning on or after January 1, 2009.

(i) The amendments made to this section by the act adding this subdivision shall apply to amounts withheld on wages beginning or after January 1, 2009.

SEC. 4. Section 19136.1 of the Revenue and Taxation Code is amended to read:

19136.1. (a) Section 6654(d)(1)(A) of the Internal Revenue Code is modified to provide that in lieu of the required installments specified in that section, the amount of required installments shall instead be as follows:

(1) For each taxable year beginning on or after January 1, 2009, and before January 1, 2010, the amount of required installments shall be:

(A) For the 1st and 2nd required installments, 30 percent of the required annual payment.

(B) For the 3rd and 4th required installments, 20 percent of the required annual payment.

(2) For each taxable year beginning on or after January 1, 2010, the amount of required installments shall be:

(A) For the 1st required installment, 30 percent of the required annual payment.

(B) For the 2nd required installment, 40 percent of the required annual payment.

(C) The amount of the 3rd required installment shall be zero.

(D) For the 4th required installment, 30 percent of the required annual payment.

(b) Section 6654(d)(2)(C)(ii) of the Internal Revenue Code, relating to applicable percentage, is modified as follows:

(1) For each taxable year beginning on or after January 1, 2009, and before January 1, 2010, by substituting “27” for “22.5,” “54” for “45,” and “72” for “67.5.”

(2) For each taxable year beginning on or after January 1, 2010, by substituting “27” for “22.5,” “63” for “45,” and “63” for “67.5.”

SEC. 5. Section 13020 of the Unemployment Insurance Code is amended to read:

13020. (a) (1) Every employer who pays wages to a resident employee for services performed either within or without this state, or to a nonresident employee for services performed in this state, shall deduct and withhold from those wages, except as provided in subdivision (c) and Sections 13025 and 13026, for each payroll period, a tax computed in that manner as to produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054 of the Revenue and Taxation Code, a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code resulting from the inclusion in the gross income of the employee of the wages which were subject to withholding. The method of determining the amount to be withheld shall be prescribed by the Franchise Tax Board pursuant to Section 18663 of the Revenue and Taxation Code.

(2) For each payroll period ending on or after November 1, 2009, the sum shall comport with the changes made to Section 18663 of the Revenue and Taxation Code, by the act adding this paragraph.

(b) The department upon request may permit the use of accounting machines to calculate the proper amount to be deducted and withheld from wages, if the calculation produces an amount substantially equivalent to the amount of tax required to be withheld under subdivision (a).

(c) Withholding shall not be required by this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors' meeting.

SEC. 6. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 7. This act addresses the fiscal emergency declared by the Governor by proclamation on July 1, 2009, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

Approved _____, 2009

Governor